

Message Text

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PAGE 01 STATE 130975

43

ORIGIN EB-11

INFO OCT-01 ARA-16 ISO-00 CAB-09 CIAE-00 COME-00 DODE-00

DOT-00 INR-10 NSAE-00 RSC-01 FAA-00 PA-04 PRS-01

USIE-00 CCO-00 SSO-00 NSCE-00 SS-20 NSC-07 L-03

INRE-00 /083 R

DRAFTED BY EB/AN:MHSTYLES:VLV

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CAB - MRS. COLDREN (SUB)

ARA/EP - MR. FRECHETTE

ARA/EP - MR. PRINGLE

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Z 191626Z JUN 74

FM SECSTATE WASHDC

TO AMEMBASSY LIMA FLASH

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E.O. 11652: N/A

TAGS: ETRN, PE

SUBJECT: CIVAIR - AEROPERU AND BRANIFF

REF: LIMA 4864, 4880, 4898

1. REFTELS CROSSED STATE TELEGRAM PROVIDING SOME INFO ON
SUBJECT OF CONDITIONS IN PROPOSED AEROPERU PERMIT.

2. IT APPEARS BOTH AEROPERU, PRESS, AND PRESUMABLY GOP
HAVE MISINTERPRETED CONDITIONS. SO-CALLED SIXTH FREEDOM
CONDITION IS NOT PROHIBITION ON CARRIAGE TRAFFIC BUT, IN
EFFECT, A REFLECTION OF GENERALLY ACCEPTED INTERNATIONAL
VIEW THAT PRIMARY PURPOSE OF BILATERAL ROUTE EXCHANGES IS
TO PROVIDE SERVICE TO CARRY TRAFFIC ORIGINATING OR TERMIN-
ATING IN HOMELAND. MOST COUNTRIES SUBSCRIBE TO VIEW
THAT, WHILE SIXTH FREEDOM TRAFFIC MAY BE CARRIED IN A
SECONDARY ROLE, SUCH SERVICE SHOULD NOT BE HELD OUT TO
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PAGE 02 STATE 130975

PUBLIC OR OPERATED AS A THROUGH SERVICE. IN OTHER WORDS,

AEROPERU SHOULD NOT OPERATE AND HOLD OUT, E.G., A SANTIAGO-LIMA-MIAMI FLIGHT, BUT THERE IS NOTHING TO PREVENT IT FROM OPERATING A SANTIAGO-LIMA FLIGHT UNDER ONE NUMBER AND A LIMA-MIAMI FLIGHT UNDER ANOTHER NUMBER AND CARRYING SANTIAGO-MIAMI TRAFFIC ON SUCH A COMBINATION, EVEN IF SAME AIRCRAFT USED ON BOTH FLIGHT NUMBERS.

3. APSA'S PERMIT, ISSUED 1959 AND CANCELLED 1973, DOES NOT

CONTAIN SIXTH CONDITION. SATCO HAS TWO PERMITS, BOTH ISSUED 1973, ONE FOR CHARTERS WHICH DOES CONTAIN CONDITION, OTHER FOR NONSCHEDULED CARGO WHICH DOES NOT CONTAIN CONDITION. PERMITS FOR NUMBER AIRLINES (E.G., AVIATECA, TAN, BAHAMASAIR AND AEROLINEAS ARGENTINAS) CONTAIN SIXTH FREEDOM CONDITION, AND CAB IS GENERALLY ADDING CONDITION TO NEW OR RENEWED PERMITS AS MATTER OF POLICY. WHETHER CONDITION IS IN PERMITS OR NOT, USG REGARDS SINGLE FLIGHT NUMBER SIXTH FREEDOM OPERATIONS AS CONTRARY TO BILATERAL AGREEMENTS AND HAS PROTESTED SUCH PRACTICES TO NUMBER GOVERNMENTS (INCLUDING, FOR EXAMPLE, PANAMA).

4. INITIAL TARIFF CONDITION IS INCLUDED IN ALL PERMITS ISSUED ROUGHLY SINCE US LAW WAS AMENDED IN 1972. FYI. SOUTH'S UNDERSTANDING OF THIS SITUATION, AS REPORTED PARA 3 LIMA 4898, IS INCORRECT. END FYI.

5. EMBASSY SHOULD IMMEDIATELY ATTEMPT EXPLAIN CORRECT INTERPRETATION TO SOTO. IN VIEW FACT PERUVIANS ARE BASING OBJECTIONS ON MISUNDERSTANDING, WE ARE NOT INCLINED RECOMMEND CAB DELETE ONE OR BOTH CONDITIONS AT THIS TIME. SIXTH FREEDOM CONDITION IS A GENERAL POLICY ISSUE AND WE BELIEVE UNFORTUNATE PRECEDENT WOULD BE CREATED IF CONDITION WERE DELETED AT TIME WHEN CAB ADDING SUCH CONDITION TO NEW OR RENEWED PERMIT. TARIFF CONDITION MAY BE LESS IMPORTANT IN THIS RESPECT, BUT IT WOULD APPEAR IMPOSE NO IMPEDIMENT ON AEROPERU UNLESS IN FACT IT PROPOSES OPERATE AT CUT RATES, WHICH MIGHT THEN CREATE A SUBSTANTIVE PROBLEM. IN ANY EVENT, LAW JUDGE'S RECOMMENDED DECISION IS JUST THAT, I.E., A RECOMMENDATION TO CAB WHICH LIMITED OFFICIAL USE

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PAGE 03 STATE 130975

MUST STILL PASS ON MATTER.

6. REFERENCE IN AEROPERU PRESS RELEASE (LIMA 4880) THAT

CASE PENDING FIVE MONTHS IS WRONG. APPLICATION WAS DOCKETED AT CAB APRIL 11, 1974 (AS RESULT PERUVIAN EMBASSY DIPLOMATIC NOTE DATED APRIL 3, 1974 RECEIVED IN DEPARTMENT APRIL 5), HEARING ON MAY 16, RECOMMENDED

DECISION ISSUED JUNE 12, 1974, WELL IN ADVANCE OF TIME
SUCH CASES NORMALLY TAKE.

7. FYI. AT AEROPERU'S URGENT REQUEST, ITS US LAWYER,
EDWIN SEEGER, INTENDS ARRIVE LIMA JUNE 20 TO DISCUSS
MATTER WITH SOTO. SEEGER IS KNOWLEDGEABLE IN AVIATION
MATTERS AND WILL PROBABLY ADVISE PERUVIANS THAT RATES
SHOULD BE SUBJECT OF BILATERAL CONSULTATIONS. WE NOT CER-
TAIN WHETHER THIS REFERS TO TARIFF CONDITION IN PERMIT OR
TO QUESTION OF LEVEL OF TARIFFS. END FYI.

8. WITH RESPECT TO LAST SENTENCE IN PARA 5, IF EMBASSY
HAS NOT ALREADY DONE SO, IT SHOULD POINT OUT TO PERUVIANS
THAT CAB IS AN INDEPENDENT REGULATORY AGENCY NOT SUBJECT
TO INSTRUCTION BY DEPARTMENT OF STATE. SISCO

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